THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No :18415 of 1998

DATED:10-10-2007

BETWEEN:

Smt.Nagula Yellamma.

..... PETITIONER

AND

The Revenue Divisional Officer,
Karimnagar & another.

.....RESPONDENTS

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ORDER:

Heard learned counsel appearing for the petitioner as well as the learned Government Pleader for Assignment appearing for the respondents.

2. Petitioner seeks a writ of mandamus directing the respondents to continue him in possession of assigned lands of an extent of 0.20 guntas situated in Sy.No.120/44; an extent of 0.25 guntas in Sy.No.120/47; and an extent of
0.05 guntas in Sy.No.120/48; total Ac.1.10 guntas situated at Arepalli village, Karimnagar mandal and District by duly declaring the order passed by the 1st respondent vide Proc.No.K/2594/91, dated 27-11-1991, invoking the provisions under Section 166-B of the A.P.(Telangana Area) Land Revenue Act, 1317 F. as illegal and arbitrary.

3. It is the case of the petitioner that though an extent of Ac.1.10 guntas was assigned in his favour by the 2nd respondent-Mandal Revenue Officer, Karimnagar pursuant to the possession taken by the Sub-Collector, Karimnagar on the application made by the petitioner, in fact, possession of an extent of 0.30 guntas alone was delivered in favour of the husband of the petitioner i.e., 2.50 guntas in Sy.No.120/47 and 0.05 guntas in Sy.No.120/48 and the land in Sy.No.120/44 was not at all delivered. Even in the said extent of 0.30 guntas delivered in favour of the petitioner out of Ac.1.25 guntas, petitioner's husband spent considerable amount

to make it fit for cultivation. It is further stated that out of the said 0.30 guntas an extent of 0.12 guntas was already acquired for the purpose of railway track and the petitioner is in possession and enjoyment of only 0.18 guntas. While so, the 1st respondent-Revenue Divisional Officer issued two show cause notices, dated 18-02-1997, in proceedings No.K/2594/96, stating that an extent of 0.32 guntas in Sy.No.120/48; 0.25 guntas in Sy.No.120/44; 0.28 guntas in Sy.No.120/47 have been assigned in favour of the husband of the petitioner by the then Mandal Revenue Officer vide his proceedings, dated 27-11-1991, and all the lands are situated in Sy.No.120 of Arepalli village which is one kilometer from the Karimnagar municipality and as per the orders of the Government in G.O.Ms.No.634, dated 02-07-1990, there is a prohibition of assignment of the land out of one kilometer from any municipality. It is further stated that the assignee with a malafide intention to convert the land into house sites in future has managed to get the land assigned in his favour and he never cultivated the land since the date of assignment. It is stated that the petitioner and her son both filed explanation to the said show cause notice stating that the original assignee-Nagula Narasaiah died on 11-08-1993 and the said assigned land is not Ac.2.05 guntas but what is assigned is only Ac.1.10 guntas and the assigned lands are four kilometers away from the Karimnagar municipality and there is no malafide intention in getting the assignment of the said land. 1st respondent based on the report said to have been submitted by the Mandal Revenue Officer came to the conclusion that the assigned lands are within one mile from the Karimnagar municipality and therefore, there is prohibition to assign the land within one mile from the municipality as per the orders of the Government in G.O.Ms.No.634, dated 02-07-1990, and accordingly resumed the

lands of an extent of Ac.2.05 guntas.

4. Learned counsel appearing for the petitioner submits that the 1st respondent-Revenue Divisional Officer has no power or authority to resume the said lands by exercising the powers of the Collector under Section 166B of the Act. On the other hand, the learned Government Pleader appearing for the respondents submits that the Collector, Karimnagar by his proceedings No.B4/5416/96, dated 05-11-1996, delegated the powers of the Collector under Section 166B of the said Act in exercise of the powers conferred on him under Section 7(2) of the Act on the Revenue Divisional Officer and therefore, the 1st respondent is entitled to exercise the powers of the Collector. It is further stated that under Section 7(2) of the Act, Collector is entitled to delegate such of those powers as per the general orders of the Government, and the Government issued general orders exercising the powers of the Collector by the Revenue Divisional Officer in a notification No.49, Revenue, dated 13-09-1950, and in the said general orders, there is no delegation delegating the powers of the Collector on the Revenue Divisional Officer to exercise the powers under Section 166B of the Act.

5. Section 7(2) of the Act specifically deals with the duties and powers of the Deputy or Assistant Collector. A perusal of Section 7 of the Act goes to show that subject to the general orders of the Government a Collector, for the sake of administration in his District, is entitled to put in-charge of a Deputy or Assistant Collector to perform all duties and exercise all powers conferred on him to be performed by the Deputy or Assistant Collector. Therefore, I am of the opinion that the statute empowers the Collector to delegate his powers on the Deputy or

Assistant Collector and accordingly he has delegated his powers on the Revenue Divisional Officer under Section 7(2) of the Act to perform the powers of the Collector under Section 166B of the Act. Therefore, I am of the opinion that there is no legal infirmity in exercising the powers by the 1st respondent while passing the impugned order.

6. Insofar as the merits of the case are concerned, admittedly the so-called report of the Mandal Revenue Officer has not been furnished to the petitioner and there is no basis to come to the conclusion that the land assigned in favour of the petitioner's husband is one mile away from the Karimnagar municipality.

7. A perusal of the impugned order goes to show that there is no application of mind by the Revenue Divisional Officer as admittedly the assessment order goes to show that only Ac.1.10 guntas has been assigned but not Ac.2.05 guntas. The Revenue Divisional Officer also has not dealt with the actual extent of land assigned in favour of the husband of the petitioner and acquisition of 0.12 guntas for the railway track and it is the specific contention of the petitioner that only 0.18 guntas is in occupation of the petitioner after the death of her husband.

8. Having regard to the facts and circumstances of the case, I am of the opinion that reasonable opportunity has not been given to the petitioner and the factual contentions have not been dealt with. Therefore, the impugned order is set aside and the matter is remitted back to the 1st respondent to conduct an enquiry and pass appropriate orders in accordance with law.

9. Accordingly, Writ Petition is allowed. There shall be no

order as to costs.

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V.ESWARAIAH,J

10th October, 2007.

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